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Soldiers' and Sailors Relief Act of 1940

By L. A. HELLERSTEIN.*

In DICTA, for the month of October, 1940, there appeared an article relating to the Soldiers' and Sailors' Relief Act of 1918 prepared by the writer. As was noted in the previous article, the Act of 1918 was revived, with certain exceptions, by the passage of the National Guard Act approved August 27, 1940, and the Selective Training and Service Act approved September 16, 1940. On October 7, 1940, Congress replaced the Soldiers' and Sailors' Relief Act of 1918 as revived with a new complete act which has now been approved by the president and is known as "The Soldiers' and Sailors' Relief Act of 1940."

The act of 1940 reenacts the 1918 act, amending certain sections and making some changes. In this article an attempt will be made to point out the important changes and amendments.

It is to be noted that the 1940 act broadens the scope of the act to not only those selected under the Selective Training and Service Act and to those persons included in the National Guard Act, but now becomes applicable to members of the U. S. army, the navy, the military corps, the coast guard, and all officers of the Public Health Service detailed by proper authority for duty either with the army or the navy. A change is also made as to definitions of "military service," "period of military service," and persons affected. These changes which should be noted are contained in Section 101 of the 1940 act which is as follows:

"(1) The term 'persons in military service' and the term 'persons in the military service of the United States,' as used in this act, shall include the following persons and no others: All members of the army of the United States, the United States navy, the marine corps, the coast guard, and all officers of the Public Health Service detailed by proper authority for duty either with the army or the navy. The term 'military service' as used in this act, shall signify federal service on active duty with any branch of service heretofore referred to or mentioned as well as training or education under the supervision of the United States preliminary to induction into the military service. The terms 'active service' or 'active duty' shall include the period during which a person in military service

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is absent from duty on account of sickness, wounds, leave, or other lawful cause.

(2) The term 'period of military service, as used in this act, shall include the time between the following dates: For persons in active service at the date of the approval of this act it shall begin with the date of approval of this act; for persons entering active service after the date of this act, with the date of entering active service. It shall terminate with the date of discharge from active service or death while in active service, but in no case later than the date when this act ceases to be in force.

(3) The term 'person,' when used in this act with reference to the holder of any right alleged to exist against a person in military service or against a person secondarily liable under such right, shall include individuals, partnerships, corporations, and any other forms of business association.

(4) The term 'court,' as used in this act, shall include any court of competent jurisdiction of the United States or of any state, whether or not a court of record."

A change should be noted with reference to eviction for non-payment of rent. In the 1918 act, as to premises used chiefly for dwelling purposes, the wife, children or other dependents of a person in military service could not be evicted without a court order if the agreed rental was \$50.00 or less. Under the 1940 act the agreed rent per month is raised to \$80.00 per month.

Concerning installment contracts a proviso has been added in the act which permits the modification, termination, or cancellation of any such contract, or the repossession or retention of property purchased or received under contract, by a mutual written agreement of the parties thereto executed subsequent to the making of such contract and during or after the period of military service of the person concerned.

The result of the above is that a person in military service may in writing agree with the holder of an installment contract to terminate the agreement or work out an amicable arrangement satisfactory to both parties.

Concerning mortgages, trust deeds, and securities, the 1940 act also provides that only obligations originating prior to the date of the approval of the act are affected. This means then that obligations originating subsequent to the approval of the 1940 act secured by mortgages, deeds of trust or other securities in the nature of a mortgage upon real or personal property are not affected. Section 302 of the act is very specific concerning this proposition. However, there has now been

inserted in Section 302 of the act which relates to mortgages, trust deeds and securities an exception and proviso which appears to be applicable specifically to repossession of motor vehicles, tractors, or accessories. Section 303 of the act is one of the important changes in the 1940 act which should be given special attention. Section 303 of the act is as follows:

"No court shall stay a proceeding to resume possession of a motor vehicle, tractor, or the accessories of either, or for an order of sale thereof, where said motor vehicle, tractor, or accessories are encumbered by a purchase money mortgage, conditional sales contract, or a lease or bailment with a view to purchase, unless the court shall find that 50 per centum or more of the purchase price of said property has been paid, but in any such proceeding the court may, before entering an order or judgment, require the plaintiff to file a bond, approved by the court, conditioned to indemnify the defendant, if in military service, against any loss or damage that he may suffer by reason of any such judgment or order should the judgment or order be set aside in whole or in part."

The 1940 act also now contains provisions relating to protection of those in military service upon their life insurance policies or those entitled to benefits in the nature of life insurance arising out of membership in any fraternal or benefit association. The availability of the benefits of the act are set out in Section 402 of the act reading as follows:

"That the benefits of this act shall be available to any person in military service in respect of contracts of insurance in force under their terms up to but not exceeding a face value of \$5,000, irrespective of the number of policies held by such person whether in one or more companies, when such contracts were made and a premium was paid thereon before the date of approval of this act or not less than thirty days before entry into the military service; but in no event shall the provisions of this article apply to any policy on which premiums are due and unpaid for a period of more than one year at the time when application for the benefits of this article is made or in respect of any policy on which there is outstanding a policy loan or other indebtedness equal to or greater than 50 per centum of the cash surrender value of the policy."

Under the terms of Section 405 of the act, policies do not lapse during military service. The provisions of Section 405 are as follows:

"No policy which has not lapsed for the nonpayment of premium before the commencement of the period of military service of the insured, and which has been brought within the benefits of

this article, shall lapse or be forfeited for the nonpayment of premium during the period of such service or during one year after the expiration of such period: Provided, That in no case shall this prohibition extend for more than one year after the date when this act ceases to be in force."

The provisions of the act concerning life insurance provide for regulations to be prescribed by the administrator of veterans' affairs, a report by the insurance companies to the Veterans' Administration of those who have applied for benefits under the act, the issuance by the administrator of veterans' affairs of a certificate signed by the administrator in the name of the United States payable to the insurer for an amount of the difference between the total amount of defaulted premiums and premiums paid for those in service. The certificates are to bear such interest as may be prescribed by the secretary of the treasury. The United States is granted a lien upon the policy, subject to any existing lien, to indemnify it against loss. In the event of the death of a person in military service, the amount of the certificate is to be deducted from the proceeds of the policy and shown in the report of the insurer. The act also sets up details as to settlement between the insurer and the United States and the method of how same shall be handled by the administrator of veterans' affairs and the treasurer of the United States. The act also provides that it does not apply in respect to life insurance to any policy which is void or which may at the option of the insured be voidable if the insured is in military service. It also provides that it applies only to insurance companies or associations which are required by law to maintain a reserve, or which, if not so required, have made or make provision for the collection from those insured of a premium to cover specific war risks.

Article 5 of the 1940 act relates to taxes and public lands. Generally, concerning taxes, Section 500 (1) restricts its provisions, as therein set out, as follows:

"(1) The provisions of this section shall apply when any taxes or assessments, whether general or special, falling due during the period of military service in respect of real property owned and occupied for dwelling, agricultural, or business purposes by a person in military service or his dependents at the commencement of his period of military service and still so occupied by his dependents or employees are not paid."

Under the act a burden of proof is placed upon a person in military service or someone upon his behalf to file with the collector of taxes, or the proper officer, an affidavit in effect showing the tax assessment and that the same is unpaid and that by reason of such military service, the

ability to pay is materially affected. Thereupon no sale of the property can be made to enforce collection, except upon leave of court granted to the collector or officer. The court is authorized to stay such proceedings or sale for a period of not more than six months after the termination of the period of military service. When such property is sold, the person in military service is given the right to redeem or commence an action to redeem within six months after the termination of such service. When a tax or assessment is due and unpaid, the act fixes an interest rate of 6 per cent per annum and provides that "no other penalty or interest shall be incurred by reason of such non-payment." Concerning public lands—Section 501 (1) provides as follows:

"(1) No right to any lands owned or controlled by the United States initiated or acquired under any laws of the United States, including the mining and mineral leasing laws, by any person prior to entering military service shall during the period of such service be forfeited or prejudiced by reason of his absence from the land or his failure to perform any work or make any improvements thereon or his failure to do any other act required by or under such laws."

Concerning homestead entries, desert land entries, mining claims, permits under mineral leasing laws, the act gives protection against forfeiture during the period of military service of such person and for a period of six months thereafter. The secretary of the interior is authorized in his discretion to suspend provisions of the Reclamation Act during the period of military service or upon other conditions.

Section 513 of the act provides that collection of income tax from a person in military service shall be deferred for a period not more than six months after termination of such service. Where income tax is deferred no interest may be collected by reason of such non-payment. An exception is provided in this section which states that it does not apply to income tax on employees imposed by Section 1400 of the Federal Insurance Contributions Act.

In the foregoing it has been attempted briefly to survey the terms of the Soldiers' and Sailors' Relief Act of 1940 and point out some of its provisions so that reference thereto may be made by those interested in the subject matter. These pages do not permit greater detail. Generally, it accomplishes its purpose of granting benefits to those in military service so as to leave them free to devote their time and energies in the service of our country.